

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for a complete substitute.

**IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.**

**S. 1248**

To reauthorize the Individuals with Disabilities Education  
Act, and for other purposes.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GREGG

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Individuals with Dis-  
5 abilities Education Improvement Act of 2003”.

6 **SEC. 2. ORGANIZATION OF THE ACT.**

7 This Act is organized into the following titles:

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH  
DISABILITIES EDUCATION ACT

TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION  
RESEARCH

TITLE IV—COMMISSION ON UNIVERSAL DESIGN AND THE ACCESSIBILITY OF CURRICULUM AND INSTRUCTIONAL MATERIALS

1 **TITLE I—AMENDMENTS TO THE**  
2 **INDIVIDUALS WITH DISABILITIES**  
3 **EDUCATION ACT**

4 **SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**  
5 **ABILITIES EDUCATION ACT.**

6 Parts A through D of the Individuals with Disabil-  
7 ities Education Act (20 U.S.C. 1400 et seq.) are amended  
8 to read as follows:

9 **“PART A—GENERAL PROVISIONS**

10 **“SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS;**  
11 **PURPOSES.**

12 “(a) SHORT TITLE.—This Act may be cited as the  
13 ‘Individuals with Disabilities Education Act’.

14 “(b) TABLE OF CONTENTS.—The table of contents  
15 for this Act is as follows:

**“PART A—GENERAL PROVISIONS**

“Sec. 601. Short title; table of contents; findings; purposes.

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

“Sec. 604. Abrogation of State sovereign immunity.

“Sec. 605. Acquisition of equipment; construction or alteration of facilities.

“Sec. 606. Employment of individuals with disabilities.

“Sec. 607. Requirements for prescribing regulations.

“Sec. 608. State administration.

“Sec. 609. Report to Congress.

**“PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN**  
**WITH DISABILITIES**

“Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.

“Sec. 612. State eligibility.

“Sec. 613. Local educational agency eligibility.

“Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.

“Sec. 615. Procedural safeguards.

“Sec. 616. Monitoring, technical assistance, and enforcement.

“Sec. 617. Administration.

“Sec. 618. Program information.

“Sec. 619. Preschool grants.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

“Sec. 631. Findings and policy.

“Sec. 632. Definitions.

“Sec. 633. General authority.

“Sec. 634. Eligibility.

“Sec. 635. Requirements for statewide system.

“Sec. 636. Individualized family service plan.

“Sec. 637. State application and assurances.

“Sec. 638. Uses of funds.

“Sec. 639. Procedural safeguards.

“Sec. 640. Payor of last resort.

“Sec. 641. State Interagency Coordinating Council.

“Sec. 642. Federal administration.

“Sec. 643. Allocation of funds.

“Sec. 644. Authorization of appropriations.

“PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF  
CHILDREN WITH DISABILITIES

“Sec. 650. Findings.

“Subpart 1—State Personnel Preparation and Professional Development  
Grants

“Sec. 651. Purpose; definition; program authority.

“Sec. 652. Eligibility and collaborative process.

“Sec. 653. Applications.

“Sec. 654. Use of funds.

“Sec. 655. Authorization of appropriations.

“Subpart 2—Scientifically Based Research, Technical Assistance, Model  
Demonstration Projects, and Dissemination of Informa-  
tion

“Sec. 660. Purpose.

“Sec. 661. Administrative provisions.

“Sec. 662. Research to improve results for children with disabilities.

“Sec. 663. Technical assistance, demonstration projects, dissemination of infor-  
mation, and implementation of scientifically based research.

“Sec. 664. Personnel development to improve services and results for children  
with disabilities.

“Sec. 665. Studies and evaluations.

“Subpart 3—Supports To Improve Results for Children With Disabilities

“Sec. 670. Purposes.

“Sec. 671. Parent training and information centers.

“Sec. 672. Community parent resource centers.

“Sec. 673. Technical assistance for parent training and information centers.

“Sec. 674. Technology development, demonstration, and utilization; and media  
services.

“Sec. 675. Accessibility of instructional materials.

“Sec. 676. Authorization of appropriations.

“Subpart 4—Interim Alternative Educational Settings, Behavioral Sup-  
ports, and Whole School Interventions

“Sec. 681. Purpose.

“Sec. 682. Definition of eligible entity.

“Sec. 683. Program authorized.

“Sec. 684. Program evaluations.

“Sec. 685. Authorization of appropriations.

1 “(c) FINDINGS.—Congress finds the following:

2 “(1) Disability is a natural part of the human  
3 experience and in no way diminishes the right of in-  
4 dividuals to participate in or contribute to society.  
5 Improving educational results for children with dis-  
6 abilities is an essential element of our national policy  
7 of ensuring equality of opportunity, full participa-  
8 tion, independent living, and economic self-suffi-  
9 ciency for individuals with disabilities.

10 “(2) Before the date of the enactment of the  
11 Education for All Handicapped Children Act of  
12 1975 (Public Law 94–142), the educational needs of  
13 millions of children with disabilities were not being  
14 fully met because—

15 “(A) the children did not receive appro-  
16 priate educational services;

17 “(B) the children were excluded entirely  
18 from the public school system and from being  
19 educated with their peers;

20 “(C) undiagnosed disabilities prevented the  
21 children from having a successful educational  
22 experience; or

23 “(D) a lack of adequate resources within  
24 the public school system forced families to find  
25 services outside the public school system.

1           “(3) Since the enactment and implementation  
2 of the Education for All Handicapped Children Act  
3 of 1975, this Act has been successful in ensuring  
4 children with disabilities and the families of such  
5 children access to a free appropriate public edu-  
6 cation and in improving educational results for chil-  
7 dren with disabilities.

8           “(4) However, the implementation of this Act  
9 has been impeded by low expectations, and an insuf-  
10 ficient focus on applying replicable research on prov-  
11 en methods of teaching and learning for children  
12 with disabilities.

13           “(5) Over 25 years of research and experience  
14 has demonstrated that the education of children with  
15 disabilities can be made more effective by—

16           “(A) having high expectations for such  
17 children and ensuring their access to the gen-  
18 eral education curriculum in the regular class-  
19 room to the maximum extent possible in order  
20 to—

21           “(i) meet developmental goals and, to  
22 the maximum extent possible, the chal-  
23 lenging expectations that have been estab-  
24 lished for all children; and

1                   “(ii) be prepared to lead productive  
2                   and independent adult lives, to the max-  
3                   imum extent possible;

4                   “(B) strengthening the role and responsi-  
5                   bility of parents and ensuring that families of  
6                   such children have meaningful opportunities to  
7                   participate in the education of their children at  
8                   school and at home;

9                   “(C) coordinating this Act with other local,  
10                  educational service agency, State, and Federal  
11                  school improvement efforts, including improve-  
12                  ment efforts under the Elementary and Sec-  
13                  ondary Education Act of 1965, in order to en-  
14                  sure that such children benefit from such ef-  
15                  forts and that special education can become a  
16                  service for such children rather than a place  
17                  where they are sent;

18                  “(D) providing appropriate special edu-  
19                  cation and related services, and aids and sup-  
20                  ports in the regular classroom, to such children,  
21                  whenever appropriate;

22                  “(E) supporting high-quality, intensive  
23                  preservice preparation and professional develop-  
24                  ment for all personnel who work with children  
25                  with disabilities in order to ensure that such

1 personnel have the skills and knowledge nec-  
2 essary to improve the academic achievement  
3 and functional performance of children with dis-  
4 abilities, including the use of scientifically based  
5 instructional practices, to the maximum extent  
6 possible;

7 “(F) providing incentives for whole-school  
8 approaches, scientifically based early reading  
9 programs, positive behavioral interventions and  
10 supports, and prereferral intervention to reduce  
11 the need to label children as disabled in order  
12 to address their learning and behavioral needs;

13 “(G) focusing resources on teaching and  
14 learning while reducing paperwork and require-  
15 ments that do not assist in improving edu-  
16 cational results; and

17 “(H) supporting the development and use  
18 of technology, including assistive technology de-  
19 vices and assistive technology services, to maxi-  
20 mize accessibility for children with disabilities.

21 “(6) While States, local educational agencies,  
22 and educational service agencies are primarily re-  
23 sponsible for providing an education for all children  
24 with disabilities, it is in the national interest that  
25 the Federal Government have a supporting role in

1 assisting State and local efforts to educate children  
2 with disabilities in order to improve results for such  
3 children and to ensure equal protection of the law.

4 “(7) A more equitable allocation of resources is  
5 essential for the Federal Government to meet its re-  
6 sponsibility to provide an equal educational oppor-  
7 tunity for all individuals.

8 “(8)(A) The Federal Government must be re-  
9 sponsive to the growing needs of an increasingly  
10 more diverse society.

11 “(B) America’s ethnic profile is rapidly chang-  
12 ing. In the year 2000, 1 of every 3 persons in the  
13 United States was a member of a minority group or  
14 was limited English proficient.

15 “(C) Minority children comprise an increasing  
16 percentage of public school students.

17 “(D) With such changing demographics, re-  
18 cruitment efforts for special education personnel  
19 should focus on increasing the participation of mi-  
20 norities in the teaching profession.

21 “(9)(A) The limited English proficient popu-  
22 lation is the fastest growing in our Nation, and the  
23 growth is occurring in many parts of our Nation.

24 “(B) Studies have documented apparent dis-  
25 crepancies in the levels of referral and placement of



1 limited English proficient children in special edu-  
2 cation.

3 “(C) This poses a special challenge for special  
4 education in the referral of, assessment of, and serv-  
5 ices for, our Nation’s students from non-English  
6 language backgrounds.

7 “(10)(A) Greater efforts are needed to prevent  
8 the intensification of problems connected with  
9 mislabeling and high dropout rates among minority  
10 children with disabilities.

11 “(B) More minority children continue to be  
12 served in special education than would be expected  
13 from the percentage of minority students in the gen-  
14 eral school population.

15 “(C) African-American children are identified  
16 as having mental retardation and emotional disturb-  
17 ance at rates greater than their white counterparts.

18 “(D) In the 1998–1999 school year, African-  
19 American children represented just 14.8 percent of  
20 the population aged 6 through 21, but comprised  
21 20.2 percent of all children with disabilities.

22 “(E) Studies have found that schools with pre-  
23 dominately Caucasian students and teachers have  
24 placed disproportionately high numbers of their mi-  
25 nority students into special education.

1           “(11)(A) As the number of minority students in  
2           special education increases, the number of minority  
3           teachers and related services personnel produced in  
4           colleges and universities continues to decrease.

5           “(B) The opportunity for minority individuals,  
6           organizations, and Historically Black Colleges and  
7           Universities to participate fully in awards for grants  
8           and contracts, boards of organizations receiving  
9           funds under this Act, and peer review panels, and in  
10          the training of professionals in the area of special  
11          education is essential if we are to obtain greater suc-  
12          cess in the education of minority children with dis-  
13          abilities.

14          “(d) PURPOSES.—The purposes of this title are—

15               “(1)(A) to ensure that all children with disabil-  
16               ities have available to them a free appropriate public  
17               education that emphasizes special education and re-  
18               lated services designed to meet their unique needs  
19               and prepare them for employment, further edu-  
20               cation, and independent living;

21               “(B) to ensure that the rights of children with  
22               disabilities and parents of such children are pro-  
23               tected; and

1           “(C) to assist States, localities, educational  
2           service agencies, and Federal agencies to provide for  
3           the education of all children with disabilities;

4           “(2) to assist States in the implementation of  
5           a Statewide, coordinated, multidisciplinary, inter-  
6           agency system of early intervention services for in-  
7           fants and toddlers with disabilities and their fami-  
8           lies;

9           “(3) to ensure that educators and parents have  
10          the necessary tools to improve educational results for  
11          children with disabilities by supporting systemic-  
12          change activities; coordinated research and personnel  
13          preparation; coordinated technical assistance, dis-  
14          semination, and support; and technology develop-  
15          ment and media services; and

16          “(4) to assess, and ensure the effectiveness of,  
17          efforts to educate children with disabilities.

18   **“SEC. 602. DEFINITIONS.**

19          “Except as otherwise provided, as used in this Act:

20          “(1) ASSISTIVE TECHNOLOGY DEVICE.—The  
21          term ‘assistive technology device’ means any item,  
22          piece of equipment, or product system, whether ac-  
23          quired commercially off the shelf, modified, or cus-  
24          tomized, that is used to increase, maintain, or im-

1       prove functional capabilities of a child with a dis-  
2       ability.

3               “(2) ASSISTIVE TECHNOLOGY SERVICE.—The  
4       term ‘assistive technology service’ means any service  
5       that directly assists a child with a disability in the  
6       selection, acquisition, or use of an assistive tech-  
7       nology device. Such term includes—

8               “(A) the evaluation of the needs of such  
9       child, including a functional evaluation of the  
10      child in the child’s customary environment;

11              “(B) purchasing, leasing, or otherwise pro-  
12      viding for the acquisition of assistive technology  
13      devices by such child;

14              “(C) selecting, designing, fitting, custom-  
15      izing, adapting, applying, maintaining, repair-  
16      ing, or replacing of assistive technology devices;

17              “(D) coordinating and using other thera-  
18      pies, interventions, or services with assistive  
19      technology devices, such as those associated  
20      with existing education and rehabilitation plans  
21      and programs;

22              “(E) training or technical assistance for  
23      such child, or, where appropriate, the family of  
24      such child; and

1           “(F) training or technical assistance for  
2 professionals (including individuals providing  
3 education and rehabilitation services), employ-  
4 ers, or other individuals who provide services to,  
5 employ, or are otherwise substantially involved  
6 in the major life functions of such child.

7           “(3) CHILD WITH A DISABILITY.—

8           “(A) IN GENERAL.—The term ‘child with a  
9 disability’ means a child—

10           “(i) with mental retardation, hearing  
11 impairments (including deafness), speech  
12 or language impairments, visual impair-  
13 ments (including blindness), serious emo-  
14 tional disturbance (hereinafter referred to  
15 as ‘emotional disturbance’), orthopedic im-  
16 pairments, autism, traumatic brain injury,  
17 other health impairments, or specific learn-  
18 ing disabilities; and

19           “(ii) who, by reason thereof, needs  
20 special education and related services.

21           “(B) CHILD AGED 3 THROUGH 9.—The  
22 term ‘child with a disability’ for a child aged 3  
23 through 9 (or any subset of that age range, in-  
24 cluding ages 3 through 5), may, at the discre-

1           tion of the State and the local educational agen-  
2           cy, include a child—

3                   “(i)     experiencing     developmental  
4                   delays, as defined by the State and as  
5                   measured by appropriate diagnostic instru-  
6                   ments and procedures, in 1 or more of the  
7                   following areas: physical development, cog-  
8                   nitive development, communication devel-  
9                   opment, social or emotional development,  
10                  or adaptive development; and

11                   “(ii) who, by reason thereof, needs  
12                  special education and related services.

13                  “(4) CORE ACADEMIC SUBJECT.—The term  
14                  ‘core academic subject’ has the meaning given the  
15                  term in section 9101(11) of the Elementary and  
16                  Secondary Education Act of 1965.

17                  “(5) EDUCATIONAL SERVICE AGENCY.—The  
18                  term ‘educational service agency’—

19                   “(A) means a regional public multiservice  
20                  agency—

21                   “(i) authorized by State law to de-  
22                   velop, manage, and provide services or pro-  
23                   grams to local educational agencies; and

24                   “(ii) recognized as an administrative  
25                  agency for purposes of the provision of

1 special education and related services pro-  
2 vided within public elementary schools and  
3 secondary schools of the State; and

4 “(B) includes any other public institution  
5 or agency having administrative control and di-  
6 rection over a public elementary school or sec-  
7 ondary school.

8 “(6) ELEMENTARY SCHOOL.—The term ‘ele-  
9 mentary school’ means a nonprofit institutional day  
10 or residential school that provides elementary edu-  
11 cation, as determined under State law.

12 “(7) EQUIPMENT.—The term ‘equipment’  
13 includes—

14 “(A) machinery, utilities, and built-in  
15 equipment, and any necessary enclosures or  
16 structures to house such machinery, utilities, or  
17 equipment; and

18 “(B) all other items necessary for the  
19 functioning of a particular facility as a facility  
20 for the provision of educational services, includ-  
21 ing items such as instructional equipment and  
22 necessary furniture; printed, published, and  
23 audio-visual instructional materials; tele-  
24 communications, sensory, and other techno-

1           logical aids and devices; and books, periodicals,  
2           documents, and other related materials.

3           “(8) EXCESS COSTS.—The term ‘excess costs’  
4           means those costs that are in excess of the average  
5           annual per-student expenditure in a local edu-  
6           cational agency during the preceding school year for  
7           an elementary school or secondary school student, as  
8           may be appropriate, and which shall be computed  
9           after deducting—

10                   “(A) amounts received—

11                           “(i) under part B of this title;

12                           “(ii) under part A of title I of the El-  
13                           ementary and Secondary Education Act of  
14                           1965; and

15                           “(iii) under parts A and B of title III  
16                           of that Act; and

17                   “(B) any State or local funds expended for  
18           programs that would qualify for assistance  
19           under any of those parts.

20           “(9) FREE APPROPRIATE PUBLIC EDU-  
21           CATION.—The term ‘free appropriate public edu-  
22           cation’ means special education and related services  
23           that—



1           “(A) have been provided at public expense,  
2           under public supervision and direction, and  
3           without charge;

4           “(B) meet the standards of the State edu-  
5           cational agency;

6           “(C) include an appropriate preschool, ele-  
7           mentary school, or secondary school education  
8           in the State involved; and

9           “(D) are provided in conformity with the  
10          individualized education program required  
11          under section 614(d).

12          “(10) HIGHLY QUALIFIED; CONSULTATIVE  
13          SERVICES.—

14          “(A) HIGHLY QUALIFIED.—The term  
15          ‘highly qualified’, when used with respect to any  
16          person employed as a special education teacher  
17          teaching in a State, means a teacher who—

18               “(i)(I) except as provided in clauses  
19               (iii) and (iv), for teachers who are new to  
20               the profession, meets the definition of that  
21               term in section 9101(23) of the Elemen-  
22               tary and Secondary Education Act of  
23               1965, including full State certification or  
24               licensure as a special education teacher  
25               through a State-approved special education

1 teacher preparation program (including  
2 certification or licensure obtained through  
3 State or local educational agency approved  
4 alternative routes) or other comparably  
5 rigorous methods, except that when used  
6 with respect to any teacher teaching in a  
7 public charter school, the term means that  
8 the teacher meets the requirements set  
9 forth in the State's statute on public char-  
10 ter schools; or

11 “(II) except as provided in clauses  
12 (iii) and (iv), for teachers who are not new  
13 to the profession, has passed a State-ap-  
14 proved special education licensing or cer-  
15 tification examination, and holds a license  
16 or is certified to teach special education in  
17 such State, except that when used with re-  
18 spect to any teacher teaching in a public  
19 charter school, the term means that the  
20 teacher meets the requirements set forth in  
21 the State's statute on public charter  
22 schools.

23 “(ii) does not have certification or li-  
24 censure requirements waived on an emer-  
25 gency, temporary, or provisional basis;

1 “(iii) if the teacher provides only con-  
2 sultative services to a regular education  
3 teacher with respect to a core academic  
4 subject, the special education teacher shall  
5 meet the standards for subject knowledge  
6 and teaching skills described in section  
7 9101(23) of the Elementary and Sec-  
8 ondary Education Act of 1965 that apply  
9 to elementary school teachers; and

10 “(iv) if the teacher provides instruc-  
11 tion in a core academic subject to middle  
12 or secondary students who are performing  
13 at the elementary level, the teacher shall  
14 meet the standards for subject knowledge  
15 and teaching skills described in section  
16 9101(23) of the Elementary and Sec-  
17 ondary Education Act of 1965 that apply  
18 to elementary school teachers.

19 “(B) CONSULTATIVE SERVICES.—As used  
20 in subparagraph (A)(iii), the term ‘consultative  
21 services’ means—

22 “(i) consultation on adapting cur-  
23 ricula, using positive behavioral supports  
24 and interventions, and selecting appro-

1           priate accommodations, and does not in-  
2           clude direct instruction of students; or

3                   “(ii) teaching in collaboration with a  
4           regular education teacher or teachers who  
5           is or are highly qualified in the core aca-  
6           demic subjects being taught.

7           “(11) INDIAN.—The term ‘Indian’ means an in-  
8           dividual who is a member of an Indian tribe.

9           “(12) INDIAN TRIBE.—The term ‘Indian tribe’  
10          means any Federal or State Indian tribe, band,  
11          rancheria, pueblo, colony, or community, including  
12          any Alaska Native village or regional village corpora-  
13          tion (as defined in or established under the Alaska  
14          Native Claims Settlement Act).

15          “(13) INDIVIDUALIZED EDUCATION PRO-  
16          GRAM.—The term ‘individualized education program’  
17          or ‘IEP’ means a written statement for each child  
18          with a disability that is developed, reviewed, and re-  
19          vised in accordance with section 614(d).

20          “(14) INDIVIDUALIZED FAMILY SERVICE  
21          PLAN.—The term ‘individualized family service plan’  
22          has the meaning given such term in section 636.

23          “(15) INFANT OR TODDLER WITH A DIS-  
24          ABILITY.—The term ‘infant or toddler with a dis-

1 ability' has the meaning given such term in section  
2 632.

3 “(16) INSTITUTION OF HIGHER EDUCATION.—  
4 The term ‘institution of higher education’—

5 “(A) has the meaning given such term in  
6 section 101 (a) and (b) of the Higher Edu-  
7 cation Act of 1965; and

8 “(B) also includes any community college  
9 receiving funding from the Secretary of the In-  
10 terior under the Tribally Controlled College or  
11 University Assistance Act of 1978.

12 “(17) LIMITED ENGLISH PROFICIENT.—The  
13 term ‘limited English proficient’ has the meaning  
14 given the term in section 9101(25) of the Elemen-  
15 tary and Secondary Education Act of 1965.

16 “(18) LOCAL EDUCATIONAL AGENCY.—

17 “(A) The term ‘local educational agency’  
18 means a public board of education or other pub-  
19 lic authority legally constituted within a State  
20 for either administrative control or direction of,  
21 or to perform a service function for, public ele-  
22 mentary schools or secondary schools in a city,  
23 county, township, school district, or other polit-  
24 ical subdivision of a State, or for such combina-  
25 tion of school districts or counties as are recog-

1 nized in a State as an administrative agency for  
2 its public elementary schools or secondary  
3 schools.

4 “(B) The term includes—

5 “(i) an educational service agency, as  
6 defined in paragraph (5); and

7 “(ii) any other public institution or  
8 agency having administrative control and  
9 direction of a public elementary school or  
10 secondary school.

11 “(C) The term includes an elementary  
12 school or secondary school funded by the Bu-  
13 reau of Indian Affairs, but only to the extent  
14 that such inclusion makes the school eligible for  
15 programs for which specific eligibility is not  
16 provided to the school in another provision of  
17 law and the school does not have a student pop-  
18 ulation that is smaller than the student popu-  
19 lation of the local educational agency receiving  
20 assistance under this Act with the smallest stu-  
21 dent population, except that the school shall not  
22 be subject to the jurisdiction of any State edu-  
23 cational agency other than the Bureau of In-  
24 dian Affairs.

1           “(19) NATIVE LANGUAGE.—The term ‘native  
2           language’, when used with respect to an individual  
3           of limited English proficiency, means the language  
4           normally used by the individual, or in the case of a  
5           child, the language normally used by the parents of  
6           the child.

7           “(20) NONPROFIT.—The term ‘nonprofit’, as  
8           applied to a school, agency, organization, or institu-  
9           tion, means a school, agency, organization, or insti-  
10          tution owned and operated by 1 or more nonprofit  
11          corporations or associations no part of the net earn-  
12          ings of which inures, or may lawfully inure, to the  
13          benefit of any private shareholder or individual.

14          “(21) OUTLYING AREA.—The term ‘outlying  
15          area’ means the United States Virgin Islands,  
16          Guam, American Samoa, and the Commonwealth of  
17          the Northern Mariana Islands.

18          “(22) PARENT.—The term ‘parent’—

19                 “(A) includes a legal guardian; and

20                 “(B) except as used in sections 615(b)(2)  
21                 and 639(a)(5), includes an individual assigned  
22                 under either of those sections to be a surrogate  
23                 parent.

1           “(23) PARENT ORGANIZATION.—The term ‘par-  
2           ent organization’ has the meaning given such term  
3           in section 671(g).

4           “(24) PARENT TRAINING AND INFORMATION  
5           CENTER.—The term ‘parent training and informa-  
6           tion center’ means a center assisted under section  
7           671 or 672.

8           “(25) RELATED SERVICES.—The term ‘related  
9           services’ means transportation, and such develop-  
10          mental, corrective, and other supportive services (in-  
11          cluding speech-language pathology and audiology  
12          services, interpreting services, psychological services,  
13          physical and occupational therapy, recreation, in-  
14          cluding therapeutic recreation, social work services,  
15          school health services, counseling services, including  
16          rehabilitation counseling, orientation and mobility  
17          services, travel training instruction, and medical  
18          services, except that such medical services shall be  
19          for diagnostic and evaluation purposes only) as may  
20          be required to assist a child with a disability to ben-  
21          efit from special education, and includes the early  
22          identification and assessment of disabling conditions  
23          in children.

24          “(26) SECONDARY SCHOOL.—The term ‘sec-  
25          ondary school’ means a nonprofit institutional day or



1 residential school that provides secondary education,  
2 as determined under State law, except that it does  
3 not include any education beyond grade 12.

4 “(27) SECRETARY.—The term ‘Secretary’  
5 means the Secretary of Education.

6 “(28) SPECIAL EDUCATION.—The term ‘special  
7 education’ means specially designed instruction, at  
8 no cost to parents, to meet the unique needs of a  
9 child with a disability, including—

10 “(A) instruction conducted in the class-  
11 room, in the home, in hospitals and institutions,  
12 and in other settings; and

13 “(B) instruction in physical education.

14 “(29) SPECIFIC LEARNING DISABILITY.—

15 “(A) IN GENERAL.—The term ‘specific  
16 learning disability’ means a disorder in 1 or  
17 more of the basic psychological processes in-  
18 volved in understanding or in using language,  
19 spoken or written, which disorder may manifest  
20 itself in the imperfect ability to listen, think,  
21 speak, read, write, spell, or do mathematical  
22 calculations.

23 “(B) DISORDERS INCLUDED.—Such term  
24 includes such conditions as perceptual disabil-

1           ities, brain injury, minimal brain dysfunction,  
2           dyslexia, and developmental aphasia.

3           “(C) DISORDERS NOT INCLUDED.—Such  
4           term does not include a learning problem that  
5           is primarily the result of visual, hearing, or  
6           motor disabilities, of mental retardation, of  
7           emotional disturbance, or of environmental, cul-  
8           tural, or economic disadvantage.

9           “(30) STATE.—The term ‘State’ means each of  
10          the 50 States, the District of Columbia, the Com-  
11          monwealth of Puerto Rico, and each of the outlying  
12          areas.

13          “(31) STATE EDUCATIONAL AGENCY.—The  
14          term ‘State educational agency’ means the State  
15          board of education or other agency or officer pri-  
16          marily responsible for the State supervision of public  
17          elementary schools and secondary schools, or, if  
18          there is no such officer or agency, an officer or  
19          agency designated by the Governor or by State law.

20          “(32) SUPPLEMENTARY AIDS AND SERVICES.—  
21          The term ‘supplementary aids and services’ means  
22          aids, services, and other supports that are provided  
23          in regular education classes or other education-re-  
24          lated settings to enable children with disabilities to  
25          be educated with nondisabled children to the max-

1       imum extent appropriate in accordance with section  
2       612(a)(5).

3           “(33) TRANSITION SERVICES.—The term ‘tran-  
4       sition services’ means a coordinated set of activities  
5       for a child with a disability (as defined in paragraph  
6       (3)(A)) that—

7           “(A) is designed to be within a results-ori-  
8       ented process, that is focused on improving the  
9       academic and functional achievement of the  
10      child with a disability to facilitate the child’s  
11      movement from school to post-school activities,  
12      including post-secondary education, vocational  
13      training, integrated employment (including sup-  
14      ported employment), continuing and adult edu-  
15      cation, adult services, independent living, or  
16      community participation;

17          “(B) is based on the individual child’s  
18      needs, taking into account the child’s strengths,  
19      preferences, and interests; and

20          “(C) includes instruction, related services,  
21      community experiences, the development of em-  
22      ployment and other post-school adult living ob-  
23      jectives, and, when appropriate, acquisition of  
24      daily living skills and functional vocational eval-  
25      uation.

1   **“SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.**

2       “(a) ESTABLISHMENT.—There shall be, within the  
3 Office of Special Education and Rehabilitative Services in  
4 the Department of Education, an Office of Special Edu-  
5 cation Programs, which shall be the principal agency in  
6 such Department for administering and carrying out this  
7 Act and other programs and activities concerning the edu-  
8 cation of children with disabilities.

9       “(b) DIRECTOR.—The Office established under sub-  
10 section (a) shall be headed by a Director who shall be se-  
11 lected by the Secretary and shall report directly to the As-  
12 sistant Secretary for Special Education and Rehabilitative  
13 Services.

14       “(c) VOLUNTARY AND UNCOMPENSATED SERV-  
15 ICES.—Notwithstanding section 1342 of title 31, United  
16 States Code, the Secretary is authorized to accept vol-  
17 untary and uncompensated services in furtherance of the  
18 purposes of this Act.

19   **“SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.**

20       “(a) IN GENERAL.—A State shall not be immune  
21 under the 11th amendment to the Constitution of the  
22 United States from suit in Federal court for a violation  
23 of this Act.

24       “(b) REMEDIES.—In a suit against a State for a vio-  
25 lation of this Act, remedies (including remedies both at  
26 law and in equity) are available for such a violation to

1 the same extent as those remedies are available for such  
2 a violation in the suit against any public entity other than  
3 a State.

4 “(c) EFFECTIVE DATE.—Subsections (a) and (b)  
5 apply with respect to violations that occur in whole or part  
6 after the date of enactment of the Education of the Handi-  
7 capped Act Amendments of 1990.

8 **“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION**  
9 **OR ALTERATION OF FACILITIES.**

10 “(a) IN GENERAL.—If the Secretary determines that  
11 a program authorized under this Act will be improved by  
12 permitting program funds to be used to acquire appro-  
13 priate equipment, or to construct new facilities or alter  
14 existing facilities, the Secretary is authorized to allow the  
15 use of those funds for those purposes.

16 “(b) COMPLIANCE WITH CERTAIN REGULATIONS.—  
17 Any construction of new facilities or alteration of existing  
18 facilities under subsection (a) shall comply with the re-  
19 quirements of—

20 “(1) appendix A of part 36 of title 28, Code of  
21 Federal Regulations (commonly known as the  
22 ‘Americans with Disabilities Accessibility Guidelines  
23 for Buildings and Facilities’); or

1           “(2) appendix A of subpart 101–19.6 of title  
2           41, Code of Federal Regulations (commonly known  
3           as the ‘Uniform Federal Accessibility Standards’).

4   **“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABIL-**  
5           **ITIES.**

6           “The Secretary shall ensure that each recipient of as-  
7           sistance under this Act makes positive efforts to employ  
8           and advance in employment qualified individuals with dis-  
9           abilities in programs assisted under this Act.

10   **“SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULA-**  
11           **TIONS.**

12           “(a) IN GENERAL.—In carrying out the provisions of  
13           this Act, the Secretary shall issue regulations under this  
14           Act only to the extent that such regulations are necessary  
15           to ensure that there is compliance with the specific re-  
16           quirements of this Act.

17           “(b) PROTECTIONS PROVIDED TO CHILDREN.—The  
18           Secretary may not implement, or publish in final form,  
19           any regulation prescribed pursuant to this Act that—

20                   “(1) violates or contradicts any provision of this  
21           Act; and

22                   “(2) procedurally or substantively lessens the  
23           protections provided to children with disabilities  
24           under this Act, as embodied in regulations in effect  
25           on July 20, 1983 (particularly as such protections

1       related to parental consent to initial evaluation or  
2       initial placement in special education, least restric-  
3       tive environment, related services, timelines, attend-  
4       ance of evaluation personnel at individualized edu-  
5       cation program meetings, or qualifications of per-  
6       sonnel), except to the extent that such regulation re-  
7       flects the clear and unequivocal intent of the Con-  
8       gress in legislation.

9       “(c) PUBLIC COMMENT PERIOD.—The Secretary  
10      shall provide a public comment period of not more than  
11      90 days on any regulation proposed under part B or part  
12      C of this Act on which an opportunity for public comment  
13      is otherwise required by law.

14      “(d) POLICY LETTERS AND STATEMENTS.—The Sec-  
15      retary may not issue policy letters or other statements (in-  
16      cluding letters or statements regarding issues of national  
17      significance) that—

18               “(1) violate or contradict any provision of this  
19      Act; or

20               “(2) establish a rule that is required for compli-  
21      ance with, and eligibility under, this Act without fol-  
22      lowing the requirements of section 553 of title 5,  
23      United States Code.

24      “(e) EXPLANATION AND ASSURANCES.—Any written  
25      response by the Secretary under subsection (d) regarding

1 a policy, question, or interpretation under part B of this  
2 Act shall include an explanation in the written response  
3 that—

4 “(1) such response is provided as informal guid-  
5 ance and is not legally binding;

6 “(2) when required, such response is issued in  
7 compliance with the requirements of section 553 of  
8 title 5, United States Code; and

9 “(3) such response represents the interpretation  
10 by the Department of Education of the applicable  
11 statutory or regulatory requirements in the context  
12 of the specific facts presented.

13 “(f) CORRESPONDENCE FROM DEPARTMENT OF  
14 EDUCATION DESCRIBING INTERPRETATIONS OF THIS  
15 ACT.—

16 “(1) IN GENERAL.—The Secretary shall, on a  
17 quarterly basis, publish in the Federal Register, and  
18 widely disseminate to interested entities through var-  
19 ious additional forms of communication, a list of  
20 correspondence from the Department of Education  
21 received by individuals during the previous quarter  
22 that describes the interpretations of the Department  
23 of Education of this Act or the regulations imple-  
24 mented pursuant to this Act.



1           “(2) ADDITIONAL INFORMATION.—For each  
2       item of correspondence published in a list under  
3       paragraph (1), the Secretary shall—

4           “(A) identify the topic addressed by the  
5       correspondence and shall include such other  
6       summary information as the Secretary deter-  
7       mines to be appropriate; and

8           “(B) ensure that all such correspondence  
9       is issued, where applicable, in compliance with  
10      the requirements of section 553 of title 5,  
11      United States Code.

12   **“SEC. 608. STATE ADMINISTRATION.**

13       “(a) RULEMAKING.—Each State that receives funds  
14   under this Act shall—

15       “(1) ensure that any State rules, regulations,  
16      and policies relating to this Act conform to the pur-  
17      poses of this Act; and

18       “(2) identify in writing to its local educational  
19      agencies and the Secretary any such rule, regulation,  
20      or policy as a State-imposed requirement that is not  
21      required by this Act and Federal regulations.

22       “(b) SUPPORT AND FACILITATION.—State rules, reg-  
23      ulations, and policies under this Act shall support and fa-  
24      cilitate local educational agency and school-level systemic  
25      reform designed to enable children with disabilities to meet

1 the challenging State student academic achievement  
2 standards.

3 **“SEC. 609. REPORT TO CONGRESS.**

4       “The Comptroller General shall conduct a review of  
5 Federal, State, and local requirements relating to the edu-  
6 cation of children with disabilities to determine which re-  
7 quirements result in excessive paperwork completion bur-  
8 dens for teachers, related services providers, and school  
9 administrators, and shall report to Congress not later than  
10 18 months after the date of enactment of the Individuals  
11 with Disabilities Education Improvement Act of 2003 re-  
12 garding such review along with strategic proposals for re-  
13 ducing the paperwork burdens on teachers.